

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>CARL HILL, SR.</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,064,362
<b>PENNY'S CONCRETE, INC.</b>	)	
Respondent	)	
AND	)	
	)	
<b>CINCINNATI INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent requests review of the August 14, 2013, preliminary hearing Order entered by Administrative Law Judge (ALJ) Rebecca Sanders.

**APPEARANCES**

Jeff K. Cooper, of Topeka, Kansas, appeared for the claimant. Christopher J. McCurdy, of Overland Park, Kansas, appeared for respondent and its insurance carrier.

**RECORD AND STIPULATIONS**

The Board adopts the same stipulations and has considered the same record as did the ALJ, consisting of the transcript of the August 14, 2013, Preliminary Hearing with exhibits attached, and the documents of record filed with the Division.

**ISSUES**

The ALJ found claimant is entitled to medical care and ordered respondent to provide claimant with the names of two qualified physicians to designate a treating physician to treat claimant's post traumatic syndrome disorder. The ALJ determined the evidence shows there are no other causes for claimant's symptoms other than his work accident; there is no evidence of personal factors as a cause for claimant's psychological symptoms; there is no evidence of any preexisting factors as a cause for claimant's psychological complaints; and the only medical evidence is from Dr. Barnett who links

claimant's current psychological complaints to his work accident. The ALJ found and concluded claimant's psychological complaints arose out of and in the course of his employment.

The respondent requests review of the ALJ's Order, arguing it should be reversed as there is no expert testimony to suggest that the work accident was the prevailing factor giving rise to any psychological or psychiatric condition. Respondent does not believe claimant's psychological condition arose out of and in the course of his employment.

Claimant contends the ALJ's Order should be affirmed.

The issues are as follows:

1. Did claimant meet with psychological injury arising out of and in the course of his employment with respondent?

2. Was the work accident the prevailing factor giving rise to any psychological/psychiatric condition?

#### **FINDINGS OF FACT**

Claimant worked for respondent for approximately one year as a truck driver. His job duties were to haul concrete from the concrete plant to sites and distribute it to wherever the contractor wanted.

On July 28, 2011, claimant was in an accident on his way to drop a load of concrete. Claimant testified that his truck blew a tire, which caused the truck to flip over. Claimant's accident resulted in a torn left biceps muscle, injuries to the left shoulder, and scrapes on the left arm. Claimant also developed psychological issues as a result of the accident. Claimant testified that whenever he is sleeping and hears a loud noise it takes him back to the accident, and he has a panic attack.

Claimant testified that the panic attacks happen a couple of times a week when he hears loud noises. To relieve the symptoms of the panic attacks, claimant holds his breath for several seconds and tries to think of something that makes him calm and happy. Claimant continued to work for respondent for six weeks after the accident and was then told he was no longer needed due to lack of work. Claimant is now working for Walmart as an auto technician.

Claimant denies any psychological issues before the accident. He now has anxiety when driving and has anxiety attacks two to three times a week.

Claimant met with Robert Barnett, Ph.D., for a psychological evaluation at the request of his attorney. Dr. Barnett noted that claimant's attorney was concerned he was experiencing symptoms of depression secondary to his on-the-job injury.

Dr. Barnett noted claimant had no history of chronic, severe illness or psychiatric hospitalization or treatment. Dr. Barnett opined claimant does not appear to be suffering from any symptoms of any major mental disease or defect such as psychosis, major depressive disorder, organic brain dysfunction, or personality disorder. Dr. Barnett believes that claimant experiences symptoms of anxiety, expressed through panic episodes and flashbacks, associated with post traumatic stress disorder. He felt claimant would benefit from mental health treatment with a licensed psychologist and a medication consult with a psychiatrist. With the appropriate treatment, Dr. Barnett felt claimant could expect moderate to significant improvement.

#### **PRINCIPLES OF LAW**

In *Love v. McDonald's Restaurant*,<sup>1</sup> the Kansas Court of Appeals stated:

In order to establish a compensable claim for traumatic neurosis under the Kansas Workers' Compensation Act, K.S.A. 44-501 *et seq.*, the claimant must establish: (a) a work-related physical injury; (b) symptoms of the traumatic neurosis; and (c) that the neurosis is directly traceable to the physical injury.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.<sup>2</sup> Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2012 Supp. 44-551(i)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

#### **ANALYSIS**

Claimant developed psychological symptoms after the July 28, 2011 accident, including flashbacks, panic attacks and nightmares. Claimant's testimony in this regard is uncontradicted. Dr. Barnett wrote that claimant's panic episodes and flashbacks were symptoms of post traumatic stress disorder. Dr. Barnett's opinions are also uncontradicted. Uncontradicted evidence, which is not improbable or unreasonable, may not be disregarded unless it is shown to be untrustworthy.<sup>3</sup>

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<sup>1</sup> 13 Kan. App. 2d 397, Syl., 771 P.2d 557, *rev. denied* 245 Kan. 784 (1989).

<sup>2</sup> K.S.A. 2012 Supp. 44-534a.

<sup>3</sup> *Anderson v. Kinsley Sand & Gravel, Inc.*, 221 Kan. 191, 558 P.2d 146 (1976).

“Prevailing factor” is defined as the primary factor compared to any other factor, based on consideration of all relevant evidence.<sup>4</sup> There is no evidence in the record that claimant suffered any kind of psychological illness prior to the accident. There is no evidence in the record that claimant’s post traumatic stress disorder is related to anything other than the accident. The only evidence is that claimant suffered a traumatic injury and thereafter began experiencing symptoms related to post traumatic stress disorder. Based upon the evidence, the primary factor compared to any other factor in causing claimant’s post traumatic stress disorder is the compensable accidental injury on July 28, 2011.

### **CONCLUSIONS**

Based upon the foregoing, claimant met with psychological injury arising out of and in the course of his employment with respondent. The work accident is the prevailing factor giving rise to claimant’s post traumatic stress disorder.

### **DECISION**

**WHEREFORE**, it is the finding, decision and order of the undersigned Board Member that the Order of Administrative Law Judge Rebecca Sanders dated August 14, 2013, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of October, 2013.

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HONORABLE SETH VALERIUS  
BOARD MEMBER

c: Jeff K. Cooper, Attorney for Claimant  
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Christopher J. McCurdy, Attorney for Respondent and its Insurance Carrier  
cmccurdy@wallacesaunders.com

Rebecca Sanders, Administrative Law Judge

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<sup>4</sup> See K.S.A. 2012 Supp. 44-508(d), (g).